

Appl. No. : 10/768,717  
Filed : January 30, 2004

## REMARKS

With this amendment, Claims 10-17 have been added. Claims 1-9 are thus presented for further examination.

### Rejection Under 35 U.S.C. § 103

The Examiner has rejected Claims 1-9 under 35 U.S.C. §103(a) as being unpatentable over Gelbfish- U.S. Patent No. 5,800,457 in view of Humes- U.S. Patent No. 5,704,910.

### Claims 1-9

Claim 1 recites:

1. An adjustable device deployment system, for implanting an implantable device within an opening in the body comprising:
  - an implantable device, said device being movable between a reduced cross section and an enlarged cross section;
  - a sheath having a proximal end and a distal end and a lumen adapted to receive the implantable device;
  - a deployment catheter adapted to extend through the sheath having an elongate flexible body with a proximal end and a distal end; and
  - a deployment line adapted to extend through the deployment catheter releasably attached to the implantable device.

Applicant respectfully disagrees with the Examiner's rejection of Claims 1-9 over Gelbfish in view of Humes because the references fail to teach or suggest the unique combination of features recited by Claim 1. The Examiner asserts that Gelbfish discloses a catheter 26, an implantable device 12 and a deployment line 42. Yet, unlike Applicant's Claim 1, Gelbfish fails to disclose a sheath adapted to receive an implantable device. Instead, Gelbfish describes implantable device 12 disposed inside a catheter 26. *See* col. 8 line 5. In order to establish a sheath-catheter combination, Examiner relies on Humes, which discloses a sheath for introducing a catheter and capsule combination into a blood vessel. *See* col. 16 line 61-col. 17 line 11.

The Examiner asserts that it would have been obvious to have used a sheath, like that disclosed in Humes, to introduce the catheter of Gelbfish into a vessel. However, the Examiner's combination of Gelbfish and Humes is improper in this case. Embodiments of Applicant's invention utilize both a catheter and a sheath, because each device can serve a different purpose. For example, one function of the deployment catheter in an embodiment of Applicant's invention is to protect the deployment line; however, as shown in Figure 33 of Applicant's specification, the deployment catheter may not be extended over the implantable device. Thus, the sheath,

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which may be a trans-septal catheter as described in Applicant's specification at p. 12 ¶ 0069 and Figure 9, may be used to protect the implantable device during transport, as well as serving as a guide to deliver the device to the desired location.

In the case of Gelbfish, the combination of a sheath and catheter to protect the wire 42 and filter device 12 is wholly unnecessary. The wire 42 and device 12 in Gelbfish are both contained within the tubular member 26 when delivered and are thus fully protected. Adding a sheath to the system of Gelbfish would be redundant and against the teaching of Gelbfish, which uses the tubular member 26 to deliver the device. Humes does not suggest adding a sheath in addition to the tubular member 26, because a sheath as disclosed in Humes functions like the tubular member 26 found in Gelbfish.

Moreover, in one embodiment of Applicant's invention the implantable device is completely distal to the deployment catheter. Such a configuration is advantageous because the distal end of deployment catheter can then apply force to the proximal end of the implantable device. *See Figure 33.* In Gelbfish, however, such an application of the tubular member 26 would be undesirable because the filter device 12 is received within the tubular member to hold it in a collapsed configuration.

Ultimately, none of the reasons necessitating a dual sheath-catheter system found in embodiments of Applicant's invention are found in Gelbfish. As such, there is no reason or purpose for combining Humes with Gelbfish.

Accordingly, Applicant respectfully requests that the rejection of Claim 1 be withdrawn. Applicant further submits that dependent Claims 2-9 recite a unique combination of features not taught or suggested by the cited art.

#### New Claims

New dependent Claim 10, in conjunction with Claims 2-9, is patentable because it recites a unique combination of features not taught or suggested by the cited art. New independent Claim 11 and dependent Claims 12-17 are patentable because Gelbfish fails to teach "a deployment catheter adapted to extend through the trans-septal catheter." As discussed above, providing a trans-septal catheter and a deployment catheter, in combination with the other limitations recited, would not have been obvious in view of the cited references. Additionally,

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the prior art fails to teach an "implantable device...sized for engaging an inner surface at an atrial appendage," as claimed in Claim 11.

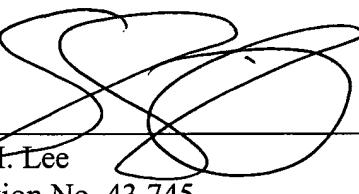
Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By:



Sabing H. Lee  
Registration No. 43,745  
Attorney of Record  
Customer No. 20,995  
(949) 760-0404

1685289  
062805